

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

**Fermin O. Perez, Jr.,**

Plaintiff,

V.

**Michael J. Astrue,**  
**Commissioner of Social Security,**

Defendant.

C/A No. 0:08-00036-CMC-PJG

## OPINION AND ORDER

Through this action, Plaintiff seeks judicial review of the final decision of the Commissioner of Social Security denying Plaintiff's claim for Disability Insurance Benefits ("DIB"). Plaintiff appealed pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3). The matter is currently before the court for review of the Report and Recommendation ("Report") of Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rules 73.02(B)(2)(a) and 83.VII.02, *et seq.*, D.S.C.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

The Report was filed on January 29, 2009, and recommends that the decision of the Commissioner be reversed and the case be remanded to the Commissioner for further proceedings. Specifically, the Report recommends that the case be remanded to the Commissioner to determine and consider the appropriate combination of Plaintiff's "severe" impairments, Plaintiff's subjective complaints of pain and other evidence of pain, more facts related to Plaintiff's failure to seek medical treatment after March 2004, and the appropriate RFC. No objections have been filed and the time for doing so has expired.<sup>1</sup>

After reviewing the record, the applicable law, and the findings and recommendations of the Magistrate Judge, the court finds no clear error. Accordingly, the Report and Recommendation is adopted and incorporated by reference. For the reasons set out therein, the final decision of the Commissioner is **reversed and the case is remanded** to the Commissioner pursuant to Sentence Four of 42 U.S.C. §§ 405(g) for further action consistent with the directions in the Report and Recommendation as here incorporated.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
February 18, 2009

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<sup>1</sup> On February 17, 2009, Defendant notified the court that he would not file objections to the Magistrate Judge's Report and Recommendation. Dkt. No. 23.